

Missouri Essay Question 1
February 2005 Bar Examination
Remedies

We R Water, Inc. (“Water”) is a water company in the State of Missouri regulated by the Public Service Commission (“PSC”). Water wants to build a water treatment plant in Little County (“County”). Water has purchased land for the plant in the unincorporated portion of County. The land is zoned agricultural.

County has lawfully adopted a comprehensive development plan and Zoning Ordinances. The Zoning Ordinances provide that an industrial plant (such as Water’s proposed plant) may not be constructed on agricultural land unless a special use permit is secured, or unless the land is rezoned to industrial. In either case, Water would be required to file all necessary applications and to comply with County’s procedures (including public hearings) to learn whether County would agree to issue a special use permit or to rezone the land for the proposed water treatment plant.

An applicable Missouri statute provides that any improvements in a county the size of County must first comply with the county’s comprehensive development plan and duly enacted Zoning Ordinances unless the proposed improvement has been “specifically authorized or permitted by a certificate of convenience and necessity” issued by the PSC. Water received a certificate of convenience and necessity (“CCN”) from the PSC in the early 1900’s. Though that CCN obviously does not discuss the water treatment plant Water proposes to construct in County in 2005, it does authorize and obligate Water to be the sole water utility in a defined area which includes County.

Water claims its CCN gives it the authority to do whatever is necessary to provide water in its defined service area, and, therefore, that the CCN “specifically authorizes and permits” the water treatment plant it proposes to build in County. Water thus contends it is not required to comply with County’s comprehensive development plan and Zoning Ordinances.

County claims Water’s CCN gives it the general obligation and authority to operate in an area, but does not give Water the “specific authority or permission” to build the proposed water treatment plant necessary to exempt Water from complying with County’s comprehensive development plan and Zoning Ordinances.

Water has begun construction of the water treatment plant and has advised County it will not seek a special use permit or rezoning of the land on which the plant is

being built. The plant will be completed and operating in three months. County comes to you for advice.

(1) Without discussing any particular cause of action, explain whether County's circumstances make it eligible for equitable relief. Why?

(2) County files a lawsuit before the water treatment plant is completed, and requests: (a) a preliminary injunction enjoining construction of the plant, and (b) a permanent injunction enjoining operation of the plant and ordering removal of the improvements constructed by Water.

a. The Court conducts an evidentiary hearing on County's request for a preliminary injunction shortly after County's Petition is filed. What elements must County establish to secure a preliminary injunction? Explain.

b. Assume County does not seek a preliminary injunction pending trial, and that the trial on County's request for a permanent injunction is conducted shortly after the water treatment plant is constructed and begins operating. Assume the Court grants County's request for a permanent injunction and orders Water to cease operating the plant and to remove the improvements it has constructed. What classification(s) of injunctions are involved in the Court's judgment? Explain.

(3) After the Court enters the judgment granting County a permanent injunction, Water refuses to stop operating the water treatment plant and refuses to remove the improvements. The Court's judgment becomes final and no appeal is filed. How can the judgment be enforced?

Missouri Essay Question 2
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Trusts

Testator owned 1,000 acres of farmland in Bootheel County, Missouri. His sister, Sister, owned 400 acres of adjoining farmland. In 1998, Testator died. Under the terms of his Will, a Testamentary Trust was established with Sister as the Trustee, and the 1,000-acre farm as the only asset. The Trustee was directed to pay all Trust income to Testator's wife, Spouse, and at Spouse's death to distribute the Trust's assets to Testator's favorite cousin, Cousin.

In 2001, Sister, as Trustee, sought to find a buyer for Testator's farm. The best offer she received was \$1,000.00 per acre (\$1,000,000.00), but the same buyer offered \$1,200.00 per acre (\$1,200,000.00) if Sister would also sell the 400 acres she owned individually. Sister enjoys farming, and she declined the offer. Some months later, when no further offers were made, Sister bought the Trust's farmland herself for \$1,100.00 per acre, which was \$100,000.00 more than the initial offer she declined. Historically, Testator's farm generated \$30,000.00 in annual cash rent.

Shortly after the purchase of Testator's farm, Sister was contacted by an old college roommate, Friend, who told Sister that she was looking for investors in a "high risk/high return" joint venture that had recently experienced financial difficulties. Sister, delighted to be able to renew her friendship with Friend, immediately wired Friend the proceeds from the sale of the farmland, \$1,100,000.00, without further inquiry or research. True to Friend's representations, the joint venture paid to Testator's Trust \$100,000.00 per year for the next three years, which money Sister distributed to Wife. In 2004, however, Friend warned Sister that the joint venture's financial problems were becoming quite serious. Sister demanded the return of her investment, but ultimately was only able to recover one-quarter (1/4) of the initial amount, \$275,000.00. Sister invested this money in government bonds.

In February 2005, Wife dies.

- 1) Identify and discuss at least three fiduciary duties to Cousin that were violated by Sister as Trustee of the Trust.
- 2) As to each duty violated, what monetary relief or other remedy is available to Cousin?

Missouri Essay Question 3
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Family Law

You represent Wife in a dissolution action. Husband and Wife, each age 30 and in good health, married on January 1, 2000. Prior to marrying, Wife was employed as a nurse. Husband is a successful mortgage broker who earns a substantial annual salary. After Husband and Wife married, they decided that Wife would not work. The couple lived lavishly, buying a 10,000 square foot home, expensive cars, and timeshares in Florida and Colorado. On January 1, 2004, Husband and Wife separated and on that date Wife filed for divorce and filed a motion for \$6,000 per month temporary maintenance.

On July 1, 2004 a hearing was held on Wife's request for temporary maintenance. At the hearing, Husband testified that he has fully supported Wife during the marriage and during the separation. Husband has been paying all of Wife's expenses and he has been paying her \$2,500 per month in cash. He testified that previously on March 1, 2004, the couple had sold their marital home and each of them received \$400,000 from the sale proceeds. Wife testified that all that Husband said was true. Wife testified that after the marital home sold she immediately bought a 5,000 square foot house and used part of her \$400,000 for the down payment. She also used some of the \$400,000 to improve her new home, including installing a \$50,000 pool and \$40,000 of new landscaping.

Following the hearing, the trial court entered an order denying Wife's request for temporary maintenance.

1. Wife asks you what options she has regarding her request for temporary maintenance. Can she appeal the trial court's order denying her request for temporary maintenance now, or can she wait until the end of the dissolution and appeal the denial of temporary maintenance with any other issues she may have? Explain fully.
2. Assume for this question that you appeal the trial court's denial of Wife's request for temporary maintenance. On appeal, you argue that the trial court erred in denying temporary maintenance because Wife should not have to consume or deplete her marital property to meet her expenses before being entitled to temporary maintenance and the trial court should not have found that she possessed sufficient property to meet her reasonable needs. Will you be successful on this point? Why or why not?

3. Assume for this question that you did not appeal the trial court's denial of Wife's request for temporary maintenance and you go to trial on the dissolution and Wife requests an order of permanent maintenance. Assume Wife has not returned to work. What must Wife prove in order to be entitled to an award for permanent maintenance? Under these facts should Wife be entitled to an award of permanent maintenance? Why or why not?

Missouri Essay Question 4
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Missouri Civil Procedure

Dependable Corporation manufactures tractors at its manufacturing facility in Kansas. Dependable sells its machinery through Middleman Corporation, its authorized dealer in Kansas City, Kansas. Neither Middleman nor Dependable have offices, facilities, salespersons, or registered agents in Missouri. Dependable knows that, over the last 10 years, Middleman has sold dozens of Dependable tractors to Missouri residents, more than it has sold to residents of any other state in the Midwest.

Paul, who lives in Missouri, purchases a Dependable tractor from Middleman. Middleman ships the tractor to Paul's farm in Missouri.

On January 1, 2000, Paul is injured when the tractor suddenly slips out of park into gear and backs over Paul's leg. On June 30, 2004, Paul files a personal injury action against Dependable and Middleman in circuit court in Missouri, alleging a defect in the design of the transmission of the tractor. The summons and petition are served on appropriate representatives of Dependable and Middleman at their respective headquarters in Kansas.

1. During its investigation, Dependable obtains an affidavit from a secretary at Middleman. In the affidavit, the secretary states that he had heard a rumor that a Middleman mechanic installed a rebuilt transmission on the tractor sold to Paul, and that therefore the tractor was in a materially different condition than it had been at the time it left Dependable's control.

(a) Using the secretary's affidavit, what motion should Dependable file in an attempt to obtain a judgment in its favor before trial? Without discussing the merits of the motion, explain what legal standards the court should apply in deciding that motion?

(b) On what basis should Paul argue that the court should strike and not consider the secretary's affidavit in ruling on the motion discussed in 1(a) above?

2. Twelve months after filing the lawsuit, Paul dismisses his lawsuit without prejudice because he is having trouble finding an expert witness. Nine months later, in March of 2006, Paul refiles the lawsuit. Dependable files a motion to dismiss on the ground that Paul's claim is barred by the applicable five-year statute of limitations. How should the court decide Dependable's motion? Explain your answer.

3. Paul never paid Middleman the entire purchase price for the tractor. Is Middleman required to assert its claim for the purchase price in Paul's lawsuit? Explain your answer.
4. In response to the first lawsuit, Dependable timely files a motion to dismiss based on an argument that the Missouri court does not have personal jurisdiction over Dependable. On what basis should Paul argue that jurisdiction was proper under the Missouri long arm statute? Include in your answer a brief explanation of why the court should reject Dependable's due process argument.